

STATE OF FLORIDA

STANDBY TRUST FUND AGREEMENT  
TO DEMONSTRATE PERPETUAL MANAGEMENT FINANCIAL ASSURANCE

THIS TRUST AGREEMENT, the "Agreement," is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the Panama City – Bay County International Airport and Industrial District, a \_\_\_\_\_ [description of business entity] \_\_\_\_\_ of the State of Florida (the "Grantor"), \_\_\_\_\_ (the "Trustee"), and the State of Florida Department of Environmental Protection ("DEP").

WHEREAS, Grantor has received from the DEP that certain permit number \_\_\_\_\_ ("DEP Permit") which authorizes the construction of a \_\_\_\_\_; and

WHEREAS, Grantor has received from the U.S. Army Corps of Engineers ("Corps") that certain permit number \_\_\_\_\_ ("DA Permit") which authorizes activities in waters of the U.S. in connection with the construction of a \_\_\_\_\_; and

WHEREAS, the DEP has established certain permit criteria requiring, among other things, that Grantor shall establish a management endowment to accomplish the enhancement and management of certain lands as set forth in the mitigation plan; and

WHEREAS, pursuant to the terms of the permit, and all subsequent modifications, extensions, or amendments thereto, the initial contribution to the endowment will be \$\_\_\_\_\_, which will be escrowed, will gain interest, and from which payment will be made on a yearly basis to allow mitigation and management activities as stated in the mitigation plan; and

WHEREAS, the Grantor has elected to establish a letter of credit to provide the perpetual management financial assurance for the conservation property and is required to establish a standby trust fund able to accept payments from that instrument; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor, the Trustee, and the DEP for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the Panama City – Bay County International Airport and Industrial District, who enters into this Agreement, and any successors or assigns of the Grantor.

Panama City – Bay County Airport and  
Industrial District  
SAJ-2001-5264(IP-GAH)  
**Document B**  
August 13, 2007

(b) The term "Trustee" means \_\_\_\_\_, the Trustee who enters into this Agreement, and any successor Trustee.

(c) The term "DEP" means the State of Florida Department of Environmental Protection or any successor thereof.

Section 2. Identification of Funding Source. This Agreement pertains to the letter of credit identified in Attachment A hereto, for which this standby trust fund is established to receive payments.

Section 3. Trustee. The Trustee shall be a state or nationally chartered banking institution.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund"), for the benefit of the DEP. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as a standby to receive payments and shall not consist of any property. Payments made by the provider of financial assurance pursuant to the DEP's instructions are transferred to the Trustee and referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, for the benefit of the DEP as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the DEP.

Section 5. Initial Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee and shall consist initially of proceeds from the letter of credit identified in Attachment A hereto. The Grantor shall have no liability or obligation to contribute any additional payments or funds to the Trust beyond the letter of credit.

Section 6. Payment for Undertaking Perpetual Management Activities. The Trustee shall make payments from the Fund as the Secretary of the DEP shall direct in writing, to provide for the payment of the costs of undertaking activities to provide for the perpetual management of the property covered by this Agreement pursuant to the requirements of the Permit. The Trustee shall reimburse persons specified by the DEP from the Fund for perpetual management expenditures in such amounts as the DEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the DEP specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of Grantor under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of Grantor arising from, and in the course of employment by Grantor;

(c) Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by Grantor that is not the direct result of the management of the property;

(e) Bodily injury or property damage for which Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Section 7. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in one or more investments and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the trust fund solely in the interest of the DEP and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of alike character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the property, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed,

underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Power of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee, and all other proper charges and disbursements of the Trustee shall be paid by the Grantor. To the extent not paid directly by the Grantor, all reasonable fees and expenses shall be paid from the income of the Fund.

Section 11. Annual Valuation. The Trust shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the DEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as

of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor or the DEP to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the DEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee Compensation. Grantor shall pay the Trustee any necessary fees for services rendered. Where the Grantor is no longer in existence, the Trustee is authorized to charge against the Trust its published Trust fee schedule in effect at the time services are rendered. However, all Trustee compensation charged against the Trust shall be paid from trust income unless the DEP authorizes payment from the trust principal in writing.

Section 14. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, the successor is approved by the DEP, and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the DEP may appoint a successor. If the DEP does not act, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the DEP, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 13.

Section 15. Instruction to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by \_\_\_\_\_ or such other designees as the Grantor may designate by amendment to this agreement. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the DEP to the Trustee shall be in writing, signed by the Secretary of DEP or the Secretary's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the DEP hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the DEP, except as provided for herein.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the DEP, or by the Trustee and the DEP if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved, or otherwise ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the DEP, or by the Trustee and the DEP, if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved, or otherwise ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered pursuant to the written agreement terminating the trust, or where Grantor has ceased to exist, then to the DEP.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the DEP issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity that the Trustee was directed to take by Grantor, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense, and from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity made in good faith.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 21. Dispute Resolution. Disputes with regard to any of the rights and obligations under this Agreement which the parties cannot resolve among themselves shall be referred to a mediator after written notice of one party to the others that a dispute does not appear resolvable by the parties. Said notice shall contain a description of the dispute, the efforts to resolve the dispute, and the issue(s) which is unresolved by the parties. Each of the parties shall designate a representative and those representatives shall promptly retain by mutual agreement the services of a mediator. The fees and expenses of the mediator shall be borne in equal amounts by the parties. Upon the passage of sixty (60) days after the sending of said notice, the parties shall be free to pursue any other legal recourse to resolve the dispute.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

**GRANTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_. Such person did/did not take an oath and:

\_\_\_\_\_ is personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced as identification

\_\_\_\_\_  
Signature of Notary  
(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission Number (if not legible on seal) \_\_\_\_\_  
My Commission Expires: (if not legible on seal) \_\_\_\_

**TRUSTEE:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. Such person did/did not take an oath and:

\_\_\_\_\_ is personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced as identification

\_\_\_\_\_  
Signature of Notary  
(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission Number (if not legible on seal) \_\_\_\_\_  
My Commission Expires: (if not legible on seal) \_\_\_\_

**DEP:**

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_. Such person did/did not take an oath and:

\_\_\_\_\_ is personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced as identification

\_\_\_\_\_  
Signature of Notary  
(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission Number (if not legible on seal) \_\_\_\_\_  
My Commission Expires: (if not legible on seal) \_\_\_\_

ATTACHMENT A

IRREVOCABLE LETTER OF CREDIT